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July 23, 2004

Board of Patent Appeals and Interferences
United States Patent and Trademark Office
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Re: **Appeal No.:** 2004-0387
Serial No.: 09/384,650
Appellants: James A. Michael, et al.
Title: Method for Dispensing Medical Items
Docket No.: D-1079 DIV

Sir:

Please find enclosed a copy of the Request for Rehearing pursuant to 37 C.F.R. § 1.197(b) in triplicate, that was previously filed on June 30, 2004 in response to the Decision dated June 23, 2004. As of this writing the USPTO's PAIR system did not show receipt of the initially filed Request for Rehearing.

No fee is deemed required. However, the Commissioner is authorized to charge any necessary fee associated with the filing of the Request for Rehearing and any other fee due to Deposit Account 10-0637.

Very truly yours,

Ralph E. Jocke
Reg. No. 31,029

CERTIFICATE OF MAILING BY EXPRESS MAIL

I hereby certify that this document and the documents indicated as enclosed herewith are being deposited with the U.S. Postal Service as Express Mail Post Office to addressee in an envelope addressed to Board of Patent Appeals and Interferences, United States Patent and Trademark Office, PO Box 1450, Alexandria, VA 22313-1450 this 26th day of July 2004.

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D-1079 DIV

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

Appeal No.:	2004-0387)	
)	
Serial No.:	09/384,650)	Art Unit 3653
)	
Appellants:	James A. Michael, et al.)	
)	
Filed:	October 27, 1999)	Patent Examiner
)	Michael E. Butler
)	
Title:	Method for Dispensing)	
	Medical Items)	

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BOARD OF PATENT APPEALS
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**REQUEST FOR REHEARING
PURSUANT TO 37 C.F.R. § 1.197(b)**

Sir:

The Appellants hereby respectfully submit their Request for Rehearing, in triplicate, concerning the above-referenced Application. Clarification of the record is also requested.

The Board of Patent Appeals and Interferences (“Board”) rendered a Decision on Appeal dated June 23, 2004 (“Decision”) regarding the current application. Appellants believe that the Board in their Conclusion section of the Decision misapprehended the number of allowable claims. Appellants respectfully request that the Decision be corrected to clarify the record. Specifically, Appellants request the Decision to correctly state that the subject matter of claims 44, 48, 50, 51, 55, and 59 is patentable over the cited references.

Claims 50, 51, 59

The Decision on page 45 restates the affirmed rejections. At page 45, lines 11-13, the Decision refers to the rejection of “claims 40-43, 46, 47, 49, 50 to 54, and 57-67 under § 103 over the combination of Higham and Blechl.” However, Appellants respectfully submit that the statement at page 45, lines 11-13 includes a typographical error, and is therefore inaccurate. Specifically, the rejection of claims 50, 51, and 59 was not affirmed under § 103 over the combination of Higham and Blechl. The statement on lines 11-13 should read “claims 40-43, 46, 47, 49, 52 to 54, 57-58, and 60-67 under § 103 over the combination of Higham and Blechl.” That is, the affirming statement should not refer to claims 50, 51, and 59.

Evidence of this fact may be found at Decision page 42, last paragraph, which states that “the subject matter of claims 50, 51, 59 is not obvious over the combination of Higham and Blechl.” Nowhere in the body of the Decision was the rejection of claims 50, 51, and 59 affirmed.

Claim 44

The Decision on page 45 restates the affirmed rejections. None of the affirmed rejections on page 45 (or elsewhere) include claim 44. The only rejection of claim 44 was under § 103 over the combination of Blechle and Kraft. However, this rejection of claim 44 was reversed.

Evidence of this fact may be found at Decision page 39, lines 4-7, which states "the subject matter of claims . . . 44 . . . is not obvious over the combination of Blechle and Kraft." The Decision at page 46, lines 3-5, is further evidence that the rejection of claim 44 was reversed. Additional evidence of the allowability of claim 44 can be ascertained from the stated allowance of claim 55, which recites language similar to claim 44. Nowhere in the Decision was the rejection of claim 44 affirmed.

Conclusion

The Decision correctly states (at page 45, lines 1-2) that the subject matter of claims 48 and 55 is patentable over the cited references. However, this statement is incomplete. As shown above, the subject matter of claims 44, 50, 51, and 59 was also decided as patentable over the cited references. Thus, Appellants respectfully request that the record be corrected to state that the subject matter of claims 44, 48, 50, 51, 55, and 59 is patentable over the cited references.

Respectfully submitted,



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